
A BILL FOR AN ACT

RELATING TO MOTOR VEHICLE SAFETY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Section 291E-1, Hawaii Revised Statutes, is
2 amended by amending the definition of "highly intoxicated
3 driver" to read as follows:

4 "Highly intoxicated driver" means a person whose measurable
5 amount of alcohol is 0.15 or more grams of alcohol per one
6 hundred milliliters or cubic centimeters of the person's blood,
7 or 0.15 or more grams of alcohol per two hundred ten liters of
8 the person's breath[, ~~as measured at the time of the offense, or~~
9 ~~within three hours of the time of the offense~~].

10 SECTION 2. Section 291E-3, Hawaii Revised Statutes, is
11 amended to read as follows:

12 "**§291E-3 Evidence of intoxication.** (a) In any criminal
13 prosecution for a violation of section 291E-61 or 291E-61.5 or
14 in any proceeding under part III:

15 (1) .08 or more grams of alcohol per one hundred
16 milliliters or cubic centimeters of the person's
17 blood;



1 (2) .08 or more grams of alcohol per two hundred ten
2 liters of the person's breath; or

3 (3) The presence of one or more drugs in an amount
4 sufficient to impair the person's ability to operate a
5 vehicle in a careful and prudent manner,

6 within three hours after the time of the alleged violation as
7 shown by chemical analysis or other approved analytical
8 techniques of the person's blood, breath, or urine shall be
9 competent evidence that the person was under the influence of an
10 intoxicant at the time of the alleged violation.

11 (b) In any criminal prosecution for a violation of section
12 291E-61 or 291E-61.5, the amount of alcohol found in the
13 defendant's blood or breath within three hours after the time of
14 the alleged violation as shown by chemical analysis or other
15 approved analytical techniques of the defendant's blood or
16 breath shall be competent evidence concerning whether the
17 defendant was under the influence of an intoxicant at the time
18 of the alleged violation and shall give rise to the following
19 presumptions:

20 (1) If there were .05 or less grams of alcohol per one
21 hundred milliliters or cubic centimeters of
22 defendant's blood or .05 or less grams of alcohol per



1 two hundred ten liters of defendant's breath, it shall
2 be presumed that the defendant was not under the
3 influence of alcohol at the time of the alleged
4 violation; and

5 (2) If there were in excess of .05 grams of alcohol per
6 one hundred milliliters or cubic centimeters of
7 defendant's blood or .05 grams of alcohol per two
8 hundred ten liters of defendant's breath, but less
9 than .08 grams of alcohol per one hundred milliliters
10 or cubic centimeters of defendant's blood or .08 grams
11 of alcohol per two hundred ten liters of defendant's
12 breath, that fact may be considered with other
13 competent evidence in determining whether the
14 defendant was under the influence of alcohol at the
15 time of the alleged violation, but shall not of itself
16 give rise to any presumption.

17 (c) In any criminal prosecution for a violation of section
18 291E-61 or in any proceeding under part III:

19 (1) .15 or more grams of alcohol per one hundred
20 milliliters or cubic centimeters of the person's
21 blood; or



1 (2) .15 or more grams of alcohol per two hundred ten
2 liters of the person's breath,
3 within three hours after the time of the alleged violation as
4 shown by chemical analysis or other approved analytical
5 techniques of the person's blood, breath, or urine shall be
6 competent evidence that the person was a highly intoxicated
7 driver at the time of the alleged violation.

8 ~~[(e)]~~ (d) Nothing in this section shall be construed as
9 limiting the introduction, in any criminal proceeding for a
10 violation under section 291E-61 or 291E-61.5 or in any
11 proceeding under part III, of relevant evidence of a person's
12 alcohol concentration or drug content obtained more than three
13 hours after an alleged violation; provided that the evidence is
14 offered in compliance with the Hawaii rules of evidence."

15 SECTION 3. Section 291E-41, Hawaii Revised Statutes, is
16 amended by amending subsection (b) to read as follows:

17 "(b) The periods of administrative revocation with respect
18 to a license and privilege to operate a vehicle, and motor
19 vehicle registration if applicable, that shall be imposed under
20 this part are as follows:

21 (1) A minimum of three months up to a maximum of one year
22 revocation of license and privilege to operate a



1 vehicle, if the respondent's record shows no prior
2 alcohol enforcement contact or drug enforcement
3 contact during the five years preceding the date the
4 notice of administrative revocation was issued;

5 (2) For a respondent who is a highly intoxicated driver,
6 if the respondent's record shows no prior alcohol
7 enforcement contact or drug enforcement contact during
8 the five years preceding the date the notice of
9 administrative revocation was issued, a [mandatory
10 six-month] minimum of six months up to a maximum of
11 one year revocation of license and privilege to
12 operate a vehicle and of the registration of any motor
13 vehicle registered to the highly intoxicated driver;
14 provided that the highly intoxicated driver shall not
15 qualify for a conditional license permit under section
16 291E-44;

17 (3) A minimum of one year up to a maximum of two years
18 revocation of license and privilege to operate a
19 vehicle and of the registration of any motor vehicle
20 registered to the respondent, if the respondent's
21 record shows one prior alcohol enforcement contact or
22 drug enforcement contact during the five years



1 preceding the date the notice of administrative
2 revocation was issued;

3 (4) A minimum of two years up to a maximum of four years
4 revocation of license and privilege to operate a
5 vehicle and of the registration of any motor vehicle
6 registered to the respondent, if the respondent's
7 record shows two prior alcohol enforcement contacts or
8 drug enforcement contacts during the seven years
9 preceding the date the notice of administrative
10 revocation was issued;

11 (5) Lifetime revocation of license and privilege to
12 operate a vehicle and of the registration of any motor
13 vehicle registered to the respondent and a lifetime
14 prohibition on any subsequent registration of motor
15 vehicles by the respondent, if the respondent's record
16 shows three or more prior alcohol enforcement contacts
17 or drug enforcement contacts during the ten years
18 preceding the date the notice of administrative
19 revocation was issued; or

20 (6) For respondents under the age of eighteen years who
21 were arrested for a violation of section 291E-61 or
22 291E-61.5, revocation of license and privilege to



1 operate a vehicle either for the period remaining
2 until the respondent's eighteenth birthday or, if
3 applicable, for the appropriate revocation period
4 provided in paragraphs (1) to (5) or in subsection
5 (d), whichever is longer and such respondents shall
6 not qualify for a conditional permit;

7 provided that when more than one administrative revocation,
8 suspension, or conviction arises out of the same arrest, it
9 shall be counted as only one prior alcohol enforcement contact
10 or drug enforcement contact, whichever revocation, suspension,
11 or conviction occurs later."

12 SECTION 4. Section 291E-61, Hawaii Revised Statutes, is
13 amended by amending subsection (b) to read as follows:

14 "(b) A person committing the offense of operating a
15 vehicle under the influence of an intoxicant shall be sentenced
16 as follows without possibility of probation or suspension of
17 sentence:

18 (1) ~~[For]~~ Except as provided in section 291E-61(b)(2), for
19 the first offense, or any offense not preceded within
20 a five-year period by a conviction for an offense
21 under this section or section 291E-4(a):



- 1 (A) A fourteen-hour minimum substance abuse
- 2 rehabilitation program, including education and
- 3 counseling, or other comparable program deemed
- 4 appropriate by the court;

- 5 (B) Ninety-day prompt suspension of license and
- 6 privilege to operate a vehicle during the
- 7 suspension period, or the court may impose, in
- 8 lieu of the ninety-day prompt suspension of
- 9 license, a minimum thirty-day prompt suspension
- 10 of license with absolute prohibition from
- 11 operating a vehicle and, for the remainder of the
- 12 ninety-day period, a restriction on the license
- 13 that allows the person to drive for limited
- 14 work-related purposes and to participate in
- 15 substance abuse treatment programs;

- 16 (C) Any one or more of the following:
- 17 (i) Seventy-two hours of community service work;
- 18 (ii) Not less than forty-eight hours and not more
- 19 than five days of imprisonment; or
- 20 (iii) A fine of not less than \$150 but not more
- 21 than \$1,000; and



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(D) A surcharge of \$25 to be deposited into the neurotrauma special fund;

(2) ~~[For an offense committed by a highly intoxicated driver, prompt suspension of license and privilege to operate a vehicle for a period of six months with an absolute prohibition from operating a vehicle during the suspension period;]~~ For a first offense committed by a highly intoxicated driver, or for any offense committed by a highly intoxicated driver not preceded within a five-year period by a conviction for an offense under this section or section 291E-4(a):

(A) A fourteen-hour minimum substance abuse rehabilitation program, including education and counseling, or other comparable program deemed appropriate by the court;

(B) Prompt suspension of a license and privilege to operate a vehicle for a period of six months with an absolute prohibition from operating a vehicle during the suspension period;

(C) Any one or more of the following:

(i) Seventy-two hours of community service work;



1 (ii) Not less than forty-eight hours and not more
2 than five days or imprisonment; or

3 (iii) A fine of not less than \$150 but not more
4 than \$1,000; and

5 (D) A surcharge of \$25 to be deposited into the
6 neurotrauma special fund;

7 (3) For an offense that occurs within five years of a
8 prior conviction for an offense under this section or
9 section 291E-4(a) by:

10 (A) Prompt suspension of license and privilege to
11 operate a vehicle for a period of one year with
12 an absolute prohibition from operating a vehicle
13 during the suspension period;

14 (B) Either one of the following:

15 (i) Not less than two hundred forty hours of
16 community service work; or

17 (ii) Not less than five days but not more than
18 fourteen days of imprisonment of which at
19 least forty-eight hours shall be served
20 consecutively;

21 (C) A fine of not less than \$500 but not more than
22 \$1,500; and



- 1 (D) A surcharge of \$25 to be deposited into the
- 2 neurotrauma special fund;
- 3 (4) For an offense that occurs within five years of two
- 4 prior convictions for offenses under this section or
- 5 section 291E-4(a):
- 6 (A) A fine of not less than \$500 but not more than
- 7 \$2,500;
- 8 (B) Revocation of license and privilege to operate a
- 9 vehicle for a period not less than one year but
- 10 not more than five years;
- 11 (C) Not less than ten days but not more than thirty
- 12 days imprisonment of which at least forty-eight
- 13 hours shall be served consecutively;
- 14 (D) A surcharge of \$25 to be deposited into the
- 15 neurotrauma special fund; and
- 16 (E) Forfeiture under chapter 712A of the vehicle
- 17 owned and operated by the person committing the
- 18 offense; provided that the department of
- 19 transportation shall provide storage for vehicles
- 20 forfeited under this subsection; and
- 21 (5) Any person eighteen years of age or older who is
- 22 convicted under this section and who operated a



1 vehicle with a passenger, in or on the vehicle, who
2 was younger than fifteen years of age, shall be
3 sentenced to an additional mandatory fine of \$500 and
4 an additional mandatory term of imprisonment of
5 forty-eight hours; provided that the total term of
6 imprisonment for a person convicted under this
7 paragraph shall not exceed the maximum term of
8 imprisonment provided in paragraph (1), [†](3)[†], or
9 [†](4)[†]."

10 SECTION 5. Section 291E-64, Hawaii Revised Statutes, is
11 amended by amending subsection (b) to read as follows:

12 "(b) A person who violates this section shall be sentenced
13 as follows:

14 (1) For a first violation or any violation not preceded
15 within a five-year period by a prior alcohol
16 enforcement contact:

17 (A) The court shall impose:

18 (i) A requirement that the person and, if the
19 person is under the age of eighteen, the
20 person's parent or guardian attend an
21 alcohol abuse education and counseling
22 program for not more than ten hours; and



1 (ii) A one hundred eighty-day prompt suspension
2 of license and privilege to operate a
3 vehicle with absolute prohibition from
4 operating a vehicle during the suspension
5 period, or in the case of a person eighteen
6 years of age or older, the court may impose,
7 in lieu of the one hundred eighty-day prompt
8 suspension of license, a minimum thirty-day
9 prompt suspension of license with absolute
10 prohibition from operating a vehicle and,
11 for the remainder of the one hundred eighty-
12 day period, a restriction on the license
13 that allows the person to drive for limited
14 work-related purposes and to participate in
15 alcohol abuse education and treatment
16 programs; and

17 (B) In addition, the court may impose any one or more
18 of the following:

19 (i) Not more than thirty-six hours of community
20 service work; or

21 (ii) A fine of not less than \$150 but not more
22 than \$500;



1 (2) For a violation [~~committed by a highly intoxicated~~
2 ~~driver or~~] that occurs within five years of a prior
3 alcohol enforcement contact:

4 (A) The court shall impose prompt suspension of
5 license and privilege to operate a vehicle for a
6 period of one year with absolute prohibition from
7 operating a vehicle during the suspension period;
8 and

9 (B) In addition, the court may impose any of the
10 following:

11 (i) Not more than fifty hours of community
12 service work; or

13 (ii) A fine of not less than \$300 but not more
14 than \$1,000; and

15 (3) For a violation that occurs within five years of two
16 prior alcohol enforcement contacts:

17 (A) The court shall impose revocation of license and
18 privilege to operate a vehicle for a period of
19 two years; and

20 (B) In addition, the court may impose any of the
21 following:



- 1 (i) Not more than one hundred hours of community
- 2 service work; or
- 3 (ii) A fine of not less than \$300 but not more
- 4 than \$1,000."

5 SECTION 6. This Act does not affect rights and duties that
6 matured, penalties that were incurred, and proceedings that were
7 begun, before its effective date.

8 SECTION 7. Statutory material to be repealed is bracketed
9 and stricken. New statutory material is underscored.

10 SECTION 8. This Act shall take effect on July 1, 2007.

11

INTRODUCED BY: *Justin*
COV 4.2.

JAN 18 2007



Report Title:

Use of Intoxicants While Operating a Motor Vehicle; Highly Intoxicated Driver.

Description:

Redefines highly intoxicated driver. Establishes evidence and sentencing parameters for highly intoxicated drivers. Establishes minimum and maximum administrative license revocation periods for highly intoxicated drivers.

